

2. RESPONSE/REMARKS

2.1 STATUS OF THE CLAIMS

Claims 1, 3-13 and 16-37 were pending at the time of the Action¹.

Claims 18 and 20-23 remain withdrawn as being directed to a non-elected invention.

Claims 1, 5-7, 9, 12, 19, 28 and 35-37 have been amended herein.

Claim 38 has been added herein.

Claims 1, 3-13 and 16-38 are now pending in the application.

2.2 SUPPORT FOR THE CLAIMS

Support for the pending claims can be found throughout the original specification, claims, and figures as filed. Minor amendments have been made to correct several typographical errors, improve grammar, and to conform the claims to current Office practice and style. Specific support for the language of amended claim 19 and new claim 38 is found, for example, at least on page 12, in the paragraph beginning at line 17. Likewise, specific support for the amended language of claim 28 is found, for example, at least on page 12, in the paragraph beginning at line 10.

Applicants believe that no new matter is introduced by way of the present claim amendments.

In light of claims canceled to date, no fee should be due for the newly added claim. However, should any fees be deemed necessary in connection with entry of the amendment for any reason, the Commissioner is hereby authorized to deduct any necessary amounts from Deposit Account No. 08-1934, Order No. 36677.11.

¹The Office Action Summary incorrectly states that "(C)laims 1, 3-13, 16, 17, 19, and 24-37 were pending at the time of the Action." Applicants note that claims 18, 20-23 were *withdrawn* from consideration, not canceled. Therefore, they remain pending in the matter, and subject to rejoinder upon allowability of the compound claims.

2.3 THE REJECTION OF CLAIMS UNDER 35 U. S. C. § 103(A) IS OVERCOME.

The Action at pages 2-5 rejected claims 1, 3-13, 16-17, 19 and 24-37 under 35 U. S. C. § 103(a), allegedly as being legally obvious in view of Dekany et al., (Peptides 1996: Proc. 24th Eur. Peptide Symp., Ramage, R and Ephron, R. (Eds.), Mayflower Scientific, Kingswinford, England, 1998, pp 331-32; hereinafter "Dekany").

Dekany is said to disclose "a lipidic moiety containing sugar compound;" Structure 2 of Dekany is said to "meet(s) the limitations of instant formula I for W being absent."

Applicants respectfully traverse.

A finding of obviousness under 35 U. S. C. § 103 requires a determination of the scope and content of the prior art, the level of ordinary skill in the art, the differences between the claimed subject matter and the prior art, and whether the differences are such that the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made. *Graham v. John Deere Co.*, 148 USPQ 459 (U.S. S.Ct. 1966).

The relevant inquiry is whether the prior art suggests the invention and whether the prior art would have provided one of ordinary skill in the art with a reasonable expectation of success. *In re O'Farrell*, 7 USPQ 2d 1673 (Fed. Cir. 1988). Both the suggestion and the reasonable expectation of success *must be founded in the prior art* and not in the Applicant's disclosure (emphasis added) *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, for Dekany *alone* to render the claimed invention legally obvious under 35 U. S. C. § 103(a), the reference must: (1) (a) teach or suggest the claimed ionic compounds of Formula I and the various pharmaceutical compositions comprising them; (b) teach or suggest a *use* of such ionic compounds; or (c) teach or suggest a method of *making* the ionic compounds of

Formula I; and (2) provide one of ordinary skill in the art with a *reasonable expectation of success* for obtaining, making, or using the ionic compounds of Formula I.

Dekany, however, fails in both aspects to obviate the claimed invention, as *it neither teaches nor suggests* ionic compounds of Formula I in which W is present, nor provides the skilled artisan with a reasonable expectation of obtaining, synthesizing, making or using such compounds. In fact, Dekany teaches *away* from the present invention as it does not disclose *any* compounds in which an ionic complex is formed. Moreover, Dekany only provides support for the R groups in the sugar moiety to be selected from hydroxyl (OH) or O-acetyl (OAc) groups. In sharp contrast, the present invention as defined in claim 1 requires O-alkyl groups and related spacer groups to be attached to the mono- or oligosaccharide. These groups do *not* correspond to the sugar moiety attached to -OH or -OAc groups in the compounds disclosed in Dekany.

Because the reference fails to meet the legal standard necessary for obviating the claimed invention, Applicants respectfully request that the rejection be withdrawn.

2.4 APPLICANTS REQUEST REJOINDER OF WITHDRAWN INVENTIONS UPON ALLOWANCE OF THE INITIALLY-ELECTED INVENTION.

Applicants provide constructive notice for their intent to seek rejoinder of claims directed to non-elected subject matter upon the allowance of the pending compound (*i.e.*, product) claims.

Referring to the pertinent part of M. P. E. P. § 821.04(b):

“Where claims directed to a product and to a process of making and/or using the product are presented in the same application, applicant may be called upon under 35 U. S. C. § 121 to elect claims to either the product or a process....(T)he claims to the non-elected invention will be withdrawn from further consideration under 37 C. F. R. § 1.142....(H)owever, if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a non-elected process invention must depend from or otherwise require all the limitations of an

allowable product claim for that process invention to be rejoined. Upon rejoinder of claims directed to a previously non-elected process invention, the restriction requirement between the elected product and rejoined process(es) will be withdrawn.” (Emphasis added).

To facilitate rejoinder, and to permit Applicants an opportunity to conform the scope of claims directed to non-elected inventions to that of the allowable product claims *prior to the conclusion of examination on the merits*, Applicants respectfully request that the Examiner acknowledge the rejoinder in a subsequent, and *non-final*, Official Action.

2.5 CONCLUSION

It is respectfully submitted that all claims are fully enabled by the Specification, and that all claims are definite and free of the prior art. Applicants believe that all of the concerns of the Examiner have been resolved, and that the pending compound claims are now acceptable under all sections of the Statutes. Rejoinder of the withdrawn claims (directed to methods of making, and a method for using the claimed compounds) is also now requested in view of the allowability of the compound claims. Applicants earnestly solicit concurrence by the Examiner and the issuance of a Notice of Allowance in the case with all due speed.

Applicants note for the record their explicit right to re-file claims to one or more aspects of the invention as originally claimed in one or more continuing application(s) retaining the priority claim from the present and parent cases.

Should the Examiner have any questions, a telephone call to the undersigned Applicants' representative would be appreciated and in particular in advance of any subsequent action on the merits.

Respectfully submitted,



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